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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON,  
AT SPOKANE

THE CINCINNATI INSURANCE  
COMPANY, an Ohio corporation; and  
THE CINCINNATI INDEMNITY  
COMPANY, an Ohio corporation,

Plaintiffs,

vs.

ZAYCON FOODS, LLC, a Washington  
limited liability company; FRANK  
MARESCA and JANE DOE  
MARESCA, husband and wife, and the  
marital community composed thereof;  
MICHAEL GIUNTA and JANE DOE  
GIUNTA, husband and wife, and the  
marital community composed thereof;  
MIKE CONRAD and JANE DOE  
CONRAD, husband and wife, and the  
marital community composed thereof;  
ADAM KREMIN and JANE DOE  
KREMIN, husband and wife, and the  
marital community composed thereof;  
and RICHARD BRADDOCK, an  
individual,

Defendants.

Cause No. 2:17-cv-0140  
**CIVIL CASE**

**COMPLAINT FOR  
DECLARATORY RELIEF**

**28 U.S.C. § 1332(a)(2)**

COMPLAINT FOR DECLARATORY RELIEF – 1  
USDC ED WA CAUSE NO. 2:17-cv-0140

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1 COME NOW plaintiffs The Cincinnati Insurance Company and The  
2 Cincinnati Indemnity Company and allege as follows:

3 **I. NATURE OF ACTION**

4 1. In this action, plaintiffs The Cincinnati Insurance Company and The  
5 Cincinnati Indemnity Company seek a declaration that they have no duty to  
6 defend, indemnify or pay sums to or on behalf of any defendant with respect to an  
7 underlying lawsuit, *Braddock v. Zaycon Foods, LLC, et al.*, U.S. District Court  
8 for the Eastern District of Washington, Case No. 16-cv-01756 TSZ (the  
9 “Underlying Suit”).  
10

11 **II. PARTIES**

12 2. Plaintiff The Cincinnati Insurance Company is an Ohio corporation  
13 having its principal place of business in Fairfield, Ohio.  
14

15 3. Plaintiff The Cincinnati Indemnity Company is an Ohio corporation  
16 having its principal place of business in Fairfield, Ohio.

17 4. On information and belief, defendant Zaycon Foods, LLC  
18 (“Zaycon”) is a Washington limited liability company having its principal place  
19 of business in Spokane, Washington.  
20

21 5. On information and belief, defendants Frank Maresca and Jane Doe  
22 Maresca (collectively, “Maresca”) are husband and wife who resided in  
23 Massapequa, New York at times relevant.

1           6.     On information and belief, defendants Michael Giunta and Jane Doe  
2     Giunta (collectively, “Giunta”) are husband and wife who resided in Sands Point,  
3     New York at times relevant.

4           7.     On information and belief, defendants Mike Conrad and Jane Doe  
5     Conrad (collectively, “Conrad”) are husband and wife who resided in Green  
6     Acres, Washington at times relevant.

7           8.     On information and belief, defendants Adam Kremin and Jane Doe  
8     Kremin (collectively, “Kremin”) are husband and wife who resided in Newman  
9     Lake, Washington at times relevant.

10          9.     On information and belief, defendant Richard Braddock  
11     (“Braddock”) resided in New York, New York at times relevant.

12  
13  
14                   **III. JURISDICTION AND VENUE**

15          10.    Subject Matter Jurisdiction.   This Court has subject matter  
16     jurisdiction under 28 U.S.C. § 1332(a)(1) because this controversy is between  
17     citizens of different states and because the matter in controversy exceeds,  
18     exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332(a).

19          11.    Personal Jurisdiction.   This Court has personal jurisdiction over  
20     defendants Conrad and Kremin, who, on information and belief, resided in  
21     Washington at relevant times.   This Court has personal jurisdiction over  
22     defendants Maresca and Giunta, who, on information and belief, were members  
23

1 and/or managers of Zaycon and conducted business in Washington at relevant  
2 times. This Court also has personal jurisdiction over defendant Braddock, who,  
3 on information and belief, conducted business in Washington and commenced the  
4 Underlying Suit in this state.  
5

6 12. Venue. Venue is properly laid in this Court under 28 U.S.C. §  
7 1391(b)(2) because a substantial part of the events or omissions giving rise to this  
8 controversy and the Underlying Suit occurred in this District.

9 **IV. FACTUAL ALLEGATIONS**

10 13. On information and belief, Frank Maresca, Michael Giunta, Mike  
11 Conrad, and Adam Kremin were members and/or managers of Zaycon at times  
12 relevant.  
13

14 14. On information and belief, Braddock invested in and loaned funds to  
15 Zaycon.

16 15. On information and belief, Braddock was also involved in Zaycon's  
17 management and business operations.

18 16. Braddock filed the Underlying Suit against Zaycon, Maresca,  
19 Giunta, Conrad, and Kremin on or about November 14, 2016. A true, correct and  
20 authentic copy of the Complaint in the Underlying Suit is attached as Exhibit A  
21 hereto and incorporated herein by this reference.  
22  
23

1           17. Braddock alleges claims in the Underlying Suit against Zaycon,  
2 Maresca, Giunta, Conrad, and Kremin, for Violation of Section 10(b) of the  
3 Securities Exchange Act and Rule 10b-5; Violation of RCW 21.20.010–Unlawful  
4 Offers, Sales and Purchases of Security; Conrad’s and Kremin’s Liability under  
5 RCW 21.20.430–Violation of DFI Cease and Desist Order; Fraud; Negligent  
6 Misrepresentation; Breach of Fiduciary Duty; Breach of Contract; Aiding and  
7 Abetting Breach of Fiduciary Duty; and Declaratory Judgment.

9           18. The Cincinnati Insurance Company issued liability insurance to  
10 Zaycon under Policy No. CAP 523 82 32, which was in effect from September  
11 19, 2013 to October 14, 2014, and under Policy No. ENP 028 25 64, which was in  
12 effect from October 14, 2014 to October 14, 2015.

14           19. The Cincinnati Indemnity Company issued liability insurance to  
15 Zaycon under Policy No. ENP 028 25 64, which was in effect for two consecutive  
16 annual periods from October 14, 2015 to October 14, 2017.

17           20. The foregoing insurance policies will be referenced herein as the  
18 “Policies.”

20           21. Subject to certain terms, conditions and exclusions, the Policies  
21 provide coverage for an insured’s legal obligation to pay damages because of  
22 “bodily injury” caused by an “occurrence.” “Bodily injury” is defined as “bodily  
23 injury, sickness or disease sustained by a person, including death resulting from

1 any of these at any time.” “Occurrence” is defined as “an accident, including  
2 continuous or repeated exposure to substantially the same general harmful  
3 conditions.”

4 22. The Underlying Suit alleges no claim for “bodily injury” caused by  
5 an “occurrence.”  
6

7 23. Subject to certain terms, conditions and exclusions, the Policies also  
8 provide coverage for an insured’s legal obligation to pay damages because of  
9 “property damage” caused by an “occurrence.” “Property damage” is defined as  
10 “physical injury to tangible property” and as “loss of use of tangible property that  
11 is not physically injured.”  
12

13 24. The Underlying Suit alleges no claim for “property damage” caused  
14 by an “occurrence.”

15 25. Subject to certain terms, conditions and exclusions, the Policies also  
16 provide liability coverage for an insured’s legal obligation to pay damages  
17 because of “personal and advertising injury,” which is defined as certain  
18 enumerated offenses.  
19

20 26. The Underlying Suit alleges no claim for “personal and advertising  
21 injury.”

22 27. Subject to certain terms, conditions and exclusions, the Policies also  
23 provide “Employee Benefit Liability” (“EBL”) coverage, which applies to an

1 insured's legal obligation to pay damages caused by an act, error or omission in  
2 the "administration" of Zaycon's "employee benefit program," as those terms are  
3 defined in the Policies.

4         28. The Underlying Suit alleges no claim that could fall within the EBL  
5 coverage.  
6

7         29. Subject to certain terms, conditions and exclusions, the Policies also  
8 provide umbrella liability insurance for an insured's legal obligation to pay  
9 "ultimate net loss" for "bodily injury," "personal and advertising injury," or  
10 "property damage," as those terms are defined in the Policies.  
11

12         30. The Underlying Suit alleges no claim that could fall within the  
13 umbrella liability coverage.

14         31. Any coverage provided in the Policies is also subject to one or more  
15 exclusions, including, but not limited to, exclusions for "bodily injury" or  
16 "property damage" reasonably expected to result from the intentional acts of an  
17 insured, exclusions for "contractual liability," and exclusions for "employment  
18 related practices."  
19

20         32. The Policies contain additional terms, limitations, conditions,  
21 exclusions and/or endorsements that may also apply to the claims and damages  
22 alleged in the Underlying Suit.  
23

1           33. Plaintiffs are presently defending Zaycon, Maresca, Giunta, Conrad,  
2 and Kremin in the Underlying Suit under a full reservation of rights.

3                   **V. CAUSE OF ACTION FOR DECLARATORY RELIEF**

4           34. Plaintiffs reallege the preceding paragraphs as though fully set forth  
5 herein.

6  
7           35. An actual controversy within the jurisdiction of this Court exists  
8 between plaintiffs and the defendants regarding the existence and scope of  
9 coverage under the Policies with respect to the claims and damages alleged in the  
10 Underlying Suit.

11           36. Plaintiffs are entitled to a declaration that the Policies do not cover  
12 the claims and damages alleged in the Underlying Suit because the Underlying  
13 Suit does not allege “bodily injury” caused by an “occurrence.”

14  
15           37. Plaintiffs are also entitled to a declaration that the Policies do not  
16 cover the claims and damages alleged in the Underlying Suit because the  
17 Underlying Suit does not allege “property damage” caused by an “occurrence.”

18           38. Plaintiffs are also entitled to a declaration that the Policies do not  
19 cover the claims and damages alleged in the Underlying Suit because the  
20 Underlying Suit does not allege “personal and advertising injury.”  
21  
22  
23



1           39. Plaintiffs are also entitled to a declaration that the Policies do not  
2 cover the claims and damages alleged in the Underlying Suit because the  
3 Underlying Suit does not allege any claim within the EBL coverage.

4           40. Plaintiffs are also entitled to a declaration that the Policies do not  
5 cover the claims and damages alleged in the Underlying Suit because the  
6 Underlying Suit does not allege any claim within the umbrella liability coverage.

7           41. Plaintiffs are also entitled to a declaration that the Policies do not  
8 cover the claims and damages alleged in the Underlying Suit due to the  
9 application of one or more other policy terms, limitations, conditions, exclusions  
10 and/or endorsements, including, without limitation, exclusions for “bodily injury”  
11 or “property damage” reasonably expected to result from the intentional acts of an  
12 insured, exclusions for “contractual liability,” and exclusions for “employment  
13 related practices.”  
14

15           42. Plaintiffs are further entitled to a declaration that they have no duty  
16 to defend Zaycon, Maresca, Giunta, Conrad, Kremin, or any of them, in the  
17 Underlying Suit, and that plaintiffs may immediately cease and withdraw from  
18 any further defense of Zaycon, Maresca, Giunta, Conrad, and Kremin in that suit.  
19  
20  
21  
22  
23

1                                   **VI. RESERVATION OF RIGHTS**

2           Plaintiffs reserve the right to amend their complaint to assert additional  
3 claims, allegations and/or other matters as additional facts are obtained through  
4 discovery and investigation.

5                                   **VII. PRAYER FOR RELIEF**

6           WHEREFORE, plaintiffs pray for relief against defendants as follows:  
7

8           1.     For a declaration that plaintiffs have no duty to indemnify or pay any  
9 sums to or on behalf of any defendant with respect to the Underlying Suit;

10          2.     For a declaration that plaintiffs have no duty to defend Zaycon,  
11 Maresca, Giunta, Conrad, Kremin, or any of them, with respect to the Underlying  
12 Suit;

13          3.     For a declaration that plaintiffs may immediately cease and withdraw  
14 from defending Zaycon, Maresca, Giunta, Conrad, and Kremin in the Underlying  
15 Suit;  
16

17          4.     For Plaintiffs' attorney fees and costs pursuant to statute, contract or  
18 equity; and

19          5.     For such other and further relief as this Court deems just and  
20 equitable.  
21  
22  
23

1 DATED this 13th day of April, 2017.

2  
3 SOHA & LANG, P.S.

4  
5 By: /s/ Gary Sparling  
6 Gary Sparling, WSBA # 23208  
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13 Attorneys for Plaintiffs  
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COMPLAINT FOR DECLARATORY RELIEF – 11  
USDC ED WA CAUSE NO. 2:17-cv-0140

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD BRADDOCK,

Plaintiff,

v.

ZAYCON FOODS, LLC, a Washington limited liability company; FRANK R. MARESCA, JANE DOE MARESCA and the marital community composed thereof; MICHAEL GIUNTA, JANE DOE GIUNTA and the marital community composed thereof; MIKE CONRAD, JANE DOE CONRAD and the marital community composed thereof; and ADAM KREMIN, JANE DOE KREMIN and the marital community composed thereof,

Defendants.

NO. 2:16-cv-1756

**COMPLAINT**

Plaintiff Richard Braddock (“Braddock”), by and through his attorneys, Trachtenberg Rodes & Friedberg LLP and Ryan, Swanson & Cleveland PLLC, as and for its Complaint herein, alleges as follows:

**I. PARTIES**

1. Plaintiff Richard Braddock is a resident of New York, New York.

2. Defendant Zaycon Foods, LLC is a Washington limited liability company with its principal place of business at 16201 E. Indiana Avenue, Suite 2150, Spokane, Washington.

3. Defendants Mike Conrad and Jane Doe Conrad are husband and wife and comprise a marital community. All of the acts of Mike Conrad were for the benefit of the Conrads and their marital community. Mike Conrad is a member and a former managing member of Zaycon. The Conrads reside at 2608 South Viewmont Drive Green Acres, Washington. The Conrads and their marital community shall collectively be referred to as “Conrad.”

4. Defendants Frank R. Maresca and Jane Doe Maresca are husband and wife and comprise a marital community. All of the acts of Frank R. Maresca were for the benefit of the Marescas and their marital community. Frank R. Maresca is a member and the managing member of Zaycon. The Marescas reside at 186 N. Manhattan Avenue, Massapequa, New York. The Marescas and their marital community shall collectively be referred to as “Maresca.”

5. Defendants Michael Giunta and Jane Doe Giunta are husband and wife and comprise a marital community. All of the acts of Michael Giunta were for the benefit of the Giuntas and their marital community. Michael Giunta is a member and a former managing member of Zaycon. The Giuntas reside at 5 Sterling Lane, Sands Point, New York. The Giuntas and their marital community shall collectively be referred to as “Giunta.”

6. Defendants Adam Kremin and Jane Doe Kremin are husband and wife and comprise a marital community. All of the acts of Adam Kremin were for the benefit of the Kremins and their marital community. Adam Kremin is a member of Zaycon. The Kremins

1 reside at 23815 East Trent Avenue, Newman Lake, Washington. The Kremins and their marital  
2 community shall collectively be referred to as “Kremin.”

## 3 4 **II. JURISDICTION**

5 7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a)  
6 of the Securities Exchange Act of 1934 (the “Securities Exchange Act”), 15 U.S.C. §§ 78j(b)  
7 and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

8 8. This Court has jurisdiction over the subject matter of this action pursuant to 28  
9 U.S.C. § 1331, Section 27 of the Securities Exchange Act and 28 U.S.C. § 1367(a).

## 10 11 **III. VENUE**

12 9. Venue is proper in this District pursuant to an agreement between the parties and  
13 Section 27 of the Securities Exchange Act and 28 U.S.C. § 1391(b). The Company is  
14 incorporated and headquartered in Washington State, and many of the acts charged herein,  
15 including the preparation and dissemination of materially false and misleading information,  
16 occurred in substantial part in the State of Washington.

17 10. In connection with the acts alleged in this Complaint, Defendants, directly or  
18 indirectly, used the means and instrumentalities of interstate commerce, including, but not  
19 limited to, the mails and interstate telephone communications.

## 20 21 **IV. FACTUAL BACKGROUND**

### 22 ***Braddock***

23 11. Braddock is the former president and chief operating officer of Citicorp and its  
24 principal subsidiary, Citibank, N.A.; former chairman and chief executive officer of  
25  
26

1 Priceline.com, which he had joined during its startup phase, which he had taken public and  
2 which now has a market capitalization in excess of \$70 billion; former chief executive officer  
3 of Medco Containment Services, Inc., the largest prescription drug services company, until its  
4 acquisition by Merck & Co., Inc. in November 1993 for \$6 billion; former chairman and CEO  
5 of FreshDirect, a successful online grocer; former principal of Clayton, Dubilier & Rice, Inc., a  
6 private equity firm; former chairman of True North Communications Inc.; former chairman of  
7 MidOcean Partners, a private investment fund; and a former director of Marriott International,  
8 Inc., Cadbury, PLC, Citibank, N.A., Lotus software and several privately held companies.

10 ***Conrad's and Kremin's Prior Violations of the Securities Laws***

11 12. During or about 2009, the Securities Division of the State of Washington's  
12 Department of Financial Institutions ("DFI") commenced an investigation of Conrad and  
13 Kremin for their promotion and sale of shares in a company by the name of IFT Holdings, Inc.,  
14 f/k/a Integrated Fuel Technologies, Inc. ("IFT").

16 13. Initially, IFT's business centered on a fuel additive delivery system known as a  
17 "fuel doser." Later, IFT focused on the development of a catalyst that removes nitrogen oxides  
18 from diesel engine emissions.

19 14. On or about November 24, 2009, DFI filed a Statement of Charges and Notice  
20 of Intent to Enter Order to Cease and Desist, to Impose Fines and to Recover Costs against  
21 Conrad and Kremin for their promotion and sale of shares in IFT.

23 15. DFI alleged *inter alia* that: (i) Conrad and Kremin violated RCW 21.20.140,  
24 through their offer and/or sale of securities for which there was no registration on file with the  
25 Washington State Securities division of DFI; (ii) Conrad and Kremin violated RCW 21.20.040  
26



1 by offering or selling said securities while not registered as a salesperson or broker-dealer in the  
2 State of Washington; and (iii) Conrad and Kremin made misstatements of material fact, or  
3 omitted to state material facts necessary in order to make the statements made, in light of the  
4 circumstances under which they were made, not misleading in violation of RCW 21.20.010.  
5

6 16. Conrad failed to request an administrative hearing on the charges. Kremin  
7 waived the right to a hearing and submitted a written statement in lieu of a hearing.

8 17. After considering the written statement and reviewing the investigative record,  
9 the Securities Administrator found no material grounds for amending the Statement of Charges  
10 against Kremin and adopted as final the findings of fact and conclusions of law set forth in the  
11 Statement of Charges.  
12

13 18. On or about January 26, 2010, DFI filed its Entry of Findings of Fact and  
14 Conclusion of Law and Final Order to Cease and Desist as to Kremin.

15 19. On or about January 27, 2010, DFI filed its Entry of Findings of Fact and  
16 Conclusions of Law and Final Order to Cease and Desist as to Conrad.

17 20. The Final Orders required Conrad and Kremin to (i) cease and desist from  
18 offering or selling securities in violation of RCW 21.20.140, the securities registration section  
19 of the Securities Act of Washington; (ii) cease and desist from acting as unregistered securities  
20 broker-dealers or salespersons in violation of RCW 21.20.040, the broker-dealer and securities  
21 salesperson registration section of the Securities Act of Washington; and (iii) cease and desist  
22 from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.  
23

24 21. In addition, Conrad was fined \$10,000 by the DFI for his violations of the  
25 securities laws.  
26

22. Upon information and belief, Conrad has never been registered as a securities broker-dealer or salesperson under RCW 21.20.040.

23. Upon information and belief, Kremin has never been registered as a securities broker-dealer or salesperson under RCW 21.20.040.

***Conrad's Bankruptcy***

24. On April 22, 2010, Conrad filed a petition for bankruptcy protection in the Eastern District of Washington, Case No. 10-02447-FPC7.

25. A significant portion of the creditors listed on Conrad's petition were IFT shareholders who had been defrauded by Conrad's IFT scheme.

26. On or about May 12, 2010, Conrad filed Schedule F to his bankruptcy petition, which identified Adam Kremin; Campbell, Bissell and Kirby, PLLC; JC Conrad and Frank Maresca – all of whom have been associated with Zaycon – as Creditors Holding Unsecured Nonpriority Claims in the Conrad bankruptcy.

27. Kremin is listed as a creditor due to his purported investment in IFT.

28. Campbell, Bissell and Kirby, PLLC ("Campbell Bissell") is listed as a creditor for "unpaid service fees".

29. JC Conrad is listed as an unsecured nonpriority creditor for a "personal loan" and as an investor in IFT.

30. Maresca is listed as an unsecured nonpriority creditor.

***Zaycon***

31. Zaycon was founded on January 9, 2010, by the filing of a Certificate of Formation with the Washington Secretary of State.

32. The Zaycon business model provides for food items to be shipped directly from the farm to the consumer, thus bypassing the normal maze of wholesalers, distributors and other intermediaries. Zaycon sources its products directly from the farm in bulk purchases. Refrigerated trucks pick up the goods at the farm and deliver them directly to the consumer at predetermined central locations. By allowing consumers to buy directly, Zaycon affords them the opportunity to get fresher products, superior quality and lower cost. Similarly, by eliminating warehousing, Zaycon can offer consumers cost savings of up to 50%.

33. The Zaycon model had the prospect to revolutionize the grocery market.

34. However, by mid-2014 the Company was floundering as it was short on capital and experienced leadership.

***Braddock Invests in Zaycon***

35. In mid-2014, based on the breadth of Braddock's experience and his willingness to invest in start-up ventures, Defendants sought out Braddock and solicited his investment in Zaycon.

36. Defendants thereupon made a series of fraudulent, reckless and/or negligent misrepresentations and omissions to Braddock.

37. Certain of these fraudulent, reckless and/or negligent misrepresentations and omissions were contained in the Second Amended and Restated Operating Agreement of Zaycon Foods dated November 1, 2012 (the "Operating Agreement"), a copy of which, as amended, was provided to Braddock during or about the summer of 2014.

38. The Operating Agreement falsely stated that the number of Class A Units which had been issued to Mike Conrad was 1,375,000.

1           39.     The Operating Agreement falsely stated that the number of Class A units which  
2 had been issued to Adam Kremin was 1,375,000.

3           40.     The Operating Agreement falsely stated that the number of Class A Units which  
4 had been issued to Frank Maresca was 750,000.

5           41.     The Operating Agreement falsely stated that the total number of Class A Units  
6 which had been issued to Zaycon members was 5,500,000.

7           42.     The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
8 had been issued to Conrad.

9           43.     The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
10 had been issued to Kremin.

11           44.     The Operating Agreement failed to disclose that at least 1,750,000 Class A Units  
12 had been issued to Maresca.

13           45.     The Operating Agreement failed to disclose that over 3,000,000 Class A Units  
14 had been issued to Giunta.

15           46.     The Operating Agreement failed to disclose that the total number of Class A  
16 Units which had been issued to Zaycon members was over 14,881,000.

17           47.     Additional fraudulent, reckless and/or negligent misrepresentations and  
18 omissions were made in a series of meetings in New York and Colorado and during telephone  
19 conversations while Braddock was in New York or Colorado which began during mid-2014 and  
20 continued until January 2016.

21           48.     During these meetings and telephone conversations, each of the Individual  
22 Defendants, acting on behalf of himself and Zaycon and the other Individual Defendants, made  
23

1 misrepresentations, including but not limited to a) that the Individual Defendants and other  
2 investors had placed substantial sums into the Company; and b) that an accurate capitalization  
3 chart was in the process of being prepared and would be provided to Braddock as soon as it was  
4 ready (together with the misrepresentations in the Operating Agreement, the  
5 “Misrepresentations”).  
6

7 49. In addition, during these meetings and telephone conversations, each of the  
8 Individual Defendants, acting on behalf of himself and Zaycon and the other Individual  
9 Defendants, failed to inform Braddock that a) DFI had initiated an action against Conrad in  
10 2009; b) DFI had issued a Cease and Desist Order as to Conrad in January 2010; c) DFI had  
11 initiated an action against Kremin in 2009; d) DFI had issued a Cease and Desist Order as to  
12 Kremin in January 2010; e) Conrad had gone into personal bankruptcy in 2010; f) Maresca had  
13 been a creditor in Conrad’s bankruptcy proceeding; g) Maresca had been given his interest in  
14 the Company for little or no consideration; h) Maresca owned at least 1,000,000 more voting  
15 units than the number of voting units set forth in Zaycon’s Operating Agreement; i) Kremin had  
16 been a creditor in Conrad’s bankruptcy proceeding; j) Kremin had been given his interest in the  
17 Company for little or no consideration; k) Kremin owned at least 1,625,000 more voting units  
18 than the number of voting units described in Zaycon’s Operating Agreement; l) the law firm  
19 which prepared Zaycon’s Operating Agreement had been a creditor in Conrad’s bankruptcy  
20 proceeding; m) Conrad had been given his own interest in the Company for little or no  
21 consideration; n) Conrad owned at least 1,625,000 more voting units than the number of voting  
22 units described in Zaycon’s Operating Agreement; and o) Giunta owned over 3,000,000 voting  
23 units which were not referenced in the Operating Agreement (together with the omissions in the  
24  
25  
26



Operating Agreement, the “Omissions”).

50. During the period from mid-2014 through January 2016, each of the Individual Defendants, acting on behalf of himself and Zaycon and the other Individual Defendants continued to make the Misrepresentations and Omissions, orally and in writing, to Braddock in connection with solicitations of additional capital and loans from Braddock.

51. All of the Misrepresentations were intentional or were tantamount to intentional misrepresentations.

52. All of the Omissions were intentional or were tantamount to intentional omissions.

53. All of the Misrepresentations were material.

54. All of the Omissions were material.

55. On or about August 21, 2014, Braddock invested \$1 million dollars in Zaycon and received a) 1,420,987 Class A membership units in Zaycon; and b) an option to purchase 947,325 additional Class A membership units in Zaycon exercisable until December 31, 2025.

56. Class A membership units in Zaycon are voting units.

57. On or about December 15, 2014, Braddock invested an additional \$500,000 in Zaycon and received 394,741 Class B membership units in Zaycon and an option to purchase 476,190 additional Class B membership units in Zaycon exercisable until December 31, 2024.

58. Class B membership units in Zaycon are non-voting units.

59. On or about September 18, 2015, Braddock invested an additional \$450,000 in Zaycon and received 478,723 Class A Units in Zaycon.

60. On or about February 3, 2015, Braddock loaned \$500,000 to Zaycon and

1 received a convertible promissory note entitling him to convert all sums owed under the note in  
2 exchange for 396,825 Class A Units in Zaycon, plus additional Class A Units in Zaycon on  
3 account of accrued interest, exercisable until December 31, 2016.

4 61. On or about May 13, 2015, Braddock loaned \$252,739.73 to Zaycon and received  
5 a convertible promissory note entitling him to convert all sums owed under the note in exchange  
6 for 221,702 Class A Units in Zaycon, exercisable until December 31, 2016.

7 62. On or about June 16, 2015, Braddock loaned \$500,000 to Zaycon and received a  
8 convertible promissory note entitling him to convert all sums owed under the note in exchange  
9 for 434,783 Class A Units in Zaycon, plus additional Class A Units in Zaycon on account of  
10 accrued interest, exercisable until June 16, 2025.

11 63. On or about September 24, 2015, Braddock loaned \$450,000 to Zaycon and  
12 received a convertible promissory note entitling him to convert all sums owed under the note in  
13 exchange for 489,130 Class A Units in Zaycon, plus additional Class A Units in Zaycon on  
14 account of accrued interest, exercisable until September 24, 2025.

15 64. On or about December 16, 2015, Braddock loaned \$200,000 to Zaycon and  
16 received a convertible promissory note entitling him to convert all sums owed under the note in  
17 exchange for 232,002 Class A Units in Zaycon, plus additional Class A Units in Zaycon on  
18 account of accrued interest, exercisable until December 16, 2016.

19 65. On or about January 4, 2016, Braddock loaned \$300,000 to Zaycon and received  
20 a convertible promissory note entitling him to convert all sums owed under the note in exchange  
21 for 359,411 Class A Units in Zaycon, plus additional Class A Units in Zaycon on account of  
22 accrued interest, exercisable until January 4, 2017.

66. On or about July 8, 2015, Braddock exercised his conversion option under his February 3, 2015, \$500,000 convertible promissory note and received 409,959 additional Class A membership units in Zaycon.

67. In sum, from August 2014 through January 2016, Braddock invested \$2,450,000 in Zaycon and provided over \$1,702,000 of convertible debt to Zaycon.

68. This made Braddock Zaycon's largest investor by far.

69. All of Braddock's investments were made in reliance on representations and omissions made in the Operating Agreement and by Maresca, Giunta, Conrad and Kremin, each of whom was acting on behalf of himself and Zaycon and the other Individual Defendants.

70. All of Braddock's loans were made in reliance on representations and omissions made in the Operating Agreement and by Maresca, Giunta, Conrad and Kremin, each of whom was acting on behalf of himself and Zaycon and the other Individual Defendants.

71. Braddock would not have made his investments in the absence of the Misrepresentations.

72. Braddock would not have made his loans if the material information omitted through the Omissions had been disclosed.

73. Conrad was a seller of securities for the purposes of federal and state law.

74. Kremin was a seller of securities for the purposes of federal and state law.

75. Maresca was a seller of securities for the purposes of federal and state law.

76. Giunta was a seller of securities for the purposes of federal and state law.

***Braddock Takes a More Active Role in Zaycon***

77. By late September 2015, Braddock began to realize that a number of



1 representations made to him by Maresca, Giunta, Conrad and Kremin, in their individual  
2 capacity and on behalf of Zaycon, about the financial and operational strength of Zaycon, had  
3 been untrue.

4 78. Accordingly, Braddock stepped in to take a more active role in the Company.

5 79. In particular, Braddock became Co-managing Member of Zaycon.

6 80. The other Co-managing Member of Zaycon during Braddock's tenure was  
7 Defendant Maresca.

8 81. On or about October 1, 2015, Braddock also became Zaycon's Chief Executive  
9 Officer and received 250,000 additional Class A membership units in Zaycon in consideration  
10 of his services as CEO pursuant to a written agreement.

11 82. Under Braddock's leadership, and with the benefit of the capital infusions  
12 received from Braddock, Zaycon's revenues grew from \$16 million in 2014 to \$25 million in  
13 2015, with 2016 revenues projected at \$73 million.

14 83. By mid-January 2016, Braddock owned 3,184,669 Class A and 394,741 Class B  
15 membership units in the Company. In addition, he had the option and the means to purchase  
16 947,325 additional Class A and 476,190 Class B membership units in the Company. He also  
17 had the right to convert the Company's indebtedness to him into up to 1,528,226 additional  
18 Class A membership units in the Company, as well as to receive certain additional Class A  
19 conversion units on account of accrued interest.

20 ***Zaycon Seeks Additional Investments***

21 84. Once Braddock had put Zaycon on firm footing, the Company determined that  
22 the time was right to seek either additional investment or the sale of the Company.

1           85.     During or about late 2015 or early 2016, Zaycon retained Vertical Group  
2 (“Vertical”) to provide investment banking services to the Company. Michael Shwartz  
3 (“Shwartz”) was the Vertical investment banker assigned to the engagement.

4           86.     During or about January 2016, Vertical and Shwartz prepared an investor  
5 presentation for Zaycon featuring Braddock as its CEO and Chairman of the Board and  
6 highlighting his unique background and qualifications.

7           87.     Vertical’s investor presentation referred to Braddock as the “seasoned” leader of  
8 Zaycon’s management team, described him as an “experienced CEO in the e-commerce and  
9 food industries” and touted both his directly relevant experience as the former chairman and  
10 CEO of priceline.com and FreshDirect and his more general high level experience in business  
11 and finance, including that gained as the former president and COO of Citicorp and Citibank,  
12 N.A.  
13

14           88.     In addition, the Vertical investor presentation noted that Zaycon’s year to year  
15 sales growth during the years 2014 to 2016 (the years of Braddock’s involvement) were 20.9%,  
16 50.9% and 193.6% (projected), respectively.

17           89.     On or about April 14, 2016, a private equity firm based in Boston, Massachusetts  
18 by the name of Great Hill Partners (“Great Hill”) submitted a proposal to make an investment  
19 of \$25 million to buy into Zaycon at a pre-money enterprise valuation of \$30 million.  
20

21           90.     The Great Hill proposal contemplated that \$10 million would be used to buy  
22 equity from existing members of Zaycon and that \$15 million would be invested directly into  
23 the Company.  
24

25           91.     Braddock advised Defendants and Vertical and Shwartz that he believed that the  
26

1 Great Hill deal could be improved through negotiation but that he was strongly in favor of  
2 coming to terms with Great Hill.

3 92. Braddock further advised Defendants that he regarded the Great Hill proposal as  
4 being more favorable than another proposal the Company had received.

5 93. The Great Hill proposal contemplated that Great Hill would acquire 56.5% of  
6 Zaycon's fully diluted equity.

7 94. This meant that the equity of all existing members of Zaycon would be diluted.

8 95. In addition, the Great Hill proposal required Zaycon to be debt-free at the closing  
9 of Great Hill's investment.

10 96. This meant that Braddock would be required to convert all of his remaining debt  
11 to equity.

12 97. Braddock and Defendants Maresca, Giunta, Conrad and Kremin thereupon  
13 agreed that Braddock would convert all of his debt to equity in order to facilitate the Great Hill  
14 transaction.

15 98. In addition, Braddock and Defendants Maresca, Giunta, Conrad and Kremin  
16 agreed once again that Braddock would be given an accurate capitalization chart and the other  
17 paperwork necessary to enable Braddock to effectuate the conversion of his debt to equity.

18 99. Giunta thereupon undertook to provide Braddock with an accurate capitalization  
19 chart and the other paperwork necessary to enable Braddock to effectuate the conversion of his  
20 debt to equity.

21 100. Defendants Maresca, Giunta, Conrad and Kremin understood that Zaycon was  
22 desperately in need of a capital infusion.

1           101. However, they feared that Great Hill's investment would change the power  
2 structure in the Company.

3           102. In particular, Defendants Maresca, Giunta, Conrad and Kremin feared that with  
4 Great Hill and Braddock being the largest investors in the Company, and with Braddock  
5 exercising management control in his capacity as Co-managing Member and CEO, they would  
6 no longer be able to control the Company.

7           103. Defendants Maresca, Giunta, Conrad and Kremin also recognized that  
8 Braddock's conversion of his debt to Class A equity as required by Great Hill would increase  
9 Braddock's voting power.

10  
11           ***Conspiracy to Oust Braddock***

12           104. Accordingly, Defendants Maresca, Giunta, Conrad and Kremin commenced  
13 looking for a way to get rid of Braddock but to hold onto Great Hill.

14           105. To that end, Defendants Maresca, Giunta, Conrad and Kremin asked Vertical and  
15 Shwartz whether Great Hill would complete the contemplated transaction even if they fired  
16 Braddock.

17           106. Vertical and Shwartz had touted Braddock's skills and experience in order to  
18 interest Great Hill in Zaycon in the first place.

19           107. In addition, Vertical and Shwartz knew or should have known that private equity  
20 firms look for experience, leadership and "skin in the game" before committing significant  
21 capital.

22           108. On the other hand, Shwartz and Vertical wanted to get rid of Braddock because  
23 Shwartz understood that Braddock was losing confidence in Shwartz's ability to successfully  
24

1 perform his duties as an investment banker for Zaycon.

2       109. Upon information and belief, in an attempt to get rid of Braddock and protect  
3 their investment banking fees, and in the face of increasing division within the Company,  
4 Vertical and Shwartz told Maresca, Giunta, Conrad and Kremin that Zaycon could go ahead and  
5 fire Braddock and remove him from his position as Co-managing Member because Vertical and  
6 Shwartz could close the Great Hill deal even without Braddock.

7       110. Upon information and belief, Shwartz went so far as to tell Maresca, Giunta,  
8 Conrad and Kremin that Braddock was not needed because Shwartz would assume the role of  
9 CEO of Zaycon once Braddock was gone.

10       111. As a result, although it had been Braddock's leadership and money which had  
11 put Zaycon on a trajectory to raise investment capital and to fulfill its potential in the first place,  
12 Defendants Zaycon, Maresca, Giunta, Conrad and Kremin decided to immediately terminate  
13 both Braddock's employment and his status as Co-managing Member of the Company.

14       112. Simultaneously, Defendants Zaycon, Maresca, Giunta and Conrad decided to  
15 delay providing Braddock with an accurate capitalization chart and the other paperwork  
16 necessary for Braddock to implement the contemplated conversion of his debt to equity as  
17 required by Great Hill.

18       113. As a result, Giunta provided Braddock with two capitalization charts which were  
19 manifestly inaccurate by virtue, among other things, of the fact that they failed to include any  
20 provision for accrued interest on Braddock's loans to the Company.

21       114. To remove Braddock as Co-managing Member under the Company's Operating  
22 Agreement, Defendants Maresca, Giunta, Conrad and Kremin needed 80% of the eligible Class  
23

1 A Units to vote for Braddock's removal.

2 115. On or about April 19 and 20, 2016, Defendants Maresca, Giunta, Conrad and  
3 Kremin prepared and signed a document denominated a Consent of Members (the "Consent")  
4 resolving that Braddock was to be removed as a manager of Zaycon.  
5

6 116. In addition, Defendants obtained the signatures of several other members of  
7 Zaycon on the Consent.

8 117. On April 21, 2016, without any advance notice or warning of their intentions,  
9 Defendants Maresca and Giunta informed Braddock that the holders of at least 80% of the Class  
10 A membership units of Zaycon had voted to remove him as a manager, and that he was being  
11 terminated as an employee.  
12

13 118. Defendants' termination of Braddock's status as Co-managing Member and  
14 termination of his employment as CEO was wrongful for several reasons.

15 119. First, as the largest single investor in and largest lender to the Company,  
16 Braddock had the right to vote over 20% of the voting units of the Company. Doing so would  
17 have prevented Braddock's termination as CEO and Co-managing Member.

18 120. Indeed, it was the manipulation of the capitalization structure and capitalization  
19 chart of the Company by Defendants Maresca, Giunta, Conrad and Kremin that allowed these  
20 Defendants to take the position that they had 80% of the votes necessary to effectuate  
21 Braddock's removal as Co-managing Member.  
22

23 121. The manipulation of the Zaycon capitalization structure by Defendants Maresca,  
24 Giunta, Conrad and Kremin included failing to properly record all of Braddock's membership  
25 units in the Company's capitalization chart.  
26

1           122. The manipulation of the Zaycon capitalization structure by Defendants Maresca,  
2 Giunta, Conrad and Kremin also included issuing vast quantities of membership units to  
3 individuals who had invested no money in the Company, including themselves, the fact of which  
4 was concealed from Braddock. Thus, the issuance of 3,000,000 Class A membership units to  
5 Conrad and 3,000,000 Class A membership units to Kremin and 1,750,000 Class A membership  
6 units to Maresca had been for no cash consideration. In addition, and to the extent that these  
7 issuances had been for services allegedly performed, they had been vastly disproportionate in  
8 amount as compared to the 250,000 units of equity issued for services to Braddock in lieu of  
9 salary in consideration of his employment contract.  
10

11           123. Second, Defendants manipulated the voting process that resulted in the execution  
12 of the Consent by fraudulently inducing certain Zaycon members to vote for Braddock's  
13 removal, thereby improperly obtaining the 80% majority necessary to oust Braddock as Co-  
14 managing Member under the Operating Agreement.  
15

16           124. Specifically, to get the signatures of other members of Zaycon on the Consent,  
17 Defendants falsely and fraudulently told them that Braddock was opposed to the deal with Great  
18 Hill and that he would kill it.  
19

20           125. In the case of Zaycon member Nathan Brown, Conrad and Giunta each called  
21 him to urge him to vote for the removal of Braddock on the alleged grounds that Braddock  
22 would sabotage the deal with Great Hill. In each instance, Brown withheld his consent. It was  
23 only when he received a third call telling him that Braddock was opposed to the deal with Great  
24 Hill – this one from Shwarts – that Brown concluded that the allegations against Braddock must  
25 be true and that he agreed to sign the Consent.  
26

1           126. Defendants further manipulated the voting process by conducting the purported  
2 vote in secret without a meeting or even notice or any opportunity for a discussion during which  
3 Braddock could have set the record straight and been heard by his fellow members before they  
4 voted.

5  
6           127. Third, Defendants acted wrongfully by withholding information and documents  
7 from Braddock which he needed in order to effectuate his already announced intended exercise  
8 of his right to convert the debt owed to him into Class A voting equity, and to exercise his option  
9 to buy additional Class A membership units. Braddock's conversion of his debt to Class A  
10 voting equity as required by Great Hill and his purchase of additional Class A membership units  
11 would have deprived Defendants of their purported 80% voting majority. Accordingly, by  
12 failing to provide Braddock with an accurate capitalization chart and the other paperwork he  
13 required, Defendants prevented Braddock from exercising his conversion rights and purchasing  
14 additional Class A units in time to vote against, and thus prevent, his ouster as Co-managing  
15 Member.

16  
17           128. In short, after Braddock had put Zaycon on an impressive trajectory, Defendants  
18 conspired to wrongfully remove him as Co-managing Member and to terminate his employment  
19 contract.

20  
21           129. Defendants Maresca, Giunta, Conrad and Kremin did so in order to further their  
22 own self-interest.

23           130. Defendants Maresca, Giunta, Conrad and Kremin did so in order to maintain  
24 control of the Company.

25           131. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that it  
26



1 would have been in the best interests of the Company to retain Braddock and to complete the  
2 Great Hill transaction.

3 132. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that  
4 Braddock had been bankrolling the Company for them.

5 133. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that their  
6 own investments in the Company were considerably smaller than Braddock's or non-existent.

7 134. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that they  
8 had utilized Braddock's involvement and investment in Zaycon to elicit Great Hill's interest in  
9 the first place.

10 135. Defendants Maresca, Giunta, Conrad and Kremin did so in the misguided belief  
11 that Great Hill would proceed with its investment even after Braddock had been removed from  
12 management.

13 136. Defendants Maresca, Giunta, Conrad and Kremin did so despite the fact that the  
14 Company's interference with Braddock's exercise of his options prevented the Company from  
15 being debt free as required by Great Hill.

16 137. Zaycon's April 21, 2016 letter to Braddock notifying him of the termination of  
17 his employment and of his status as Co-managing Member stated that Giunta had been appointed  
18 as a replacement manager.

19 138. However, on or about July 6, 2016 Giunta resigned as the co-manager of Zaycon.

20 139. Upon information and belief, no one has replaced Giunta as co-manager.

21 140. Maresca now runs the Company as its sole managing member in violation of  
22 Section 4.1 of the Operating Agreement, which states that "[t]he Company shall be managed by  
23  
24  
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1 two managers.”

2 141. Maresca now runs the Company on a part time basis.

3 142. Maresca now runs the Company as a private fiefdom without providing adequate  
4 or often any disclosure to the other members.

5 143. Each and every act taken by Maresca as the sole manager of Zaycon since the  
6 resignation of Giunta has been invalid and non-binding on the Company under the Operating  
7 Agreement.

8 144. Defendants’ termination of Braddock’s employment as CEO left the Company  
9 or its members indebted to Braddock under the Operating Agreement in the amount of the value  
10 of his membership interest.

11 145. When Braddock brought this to the attention of the Company he was told that it  
12 was anticipated that the Company would buy his interest with proceeds generated in the Great  
13 Hill transaction.

14 146. However, after the removal of Braddock as a co-manager and the termination of  
15 his employment contract as CEO, Great Hill declined to invest in Zaycon.

16 147. This left the Company starved for necessary capital to expand and grow and on  
17 the verge of insolvency.

18 148. It also left the Company unable to pay the amounts owed to Braddock.

19 149. On or about June 27, 2016, Braddock brought a new private equity financing  
20 proposal to the Company from a private equity firm by the name of Spring Lake Equity Partners  
21 (“Spring Lake”).

22 150. The Spring Lake Proposal contemplated the investment of \$7 million of  
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1 desperately needed fresh capital into Zaycon.

2 151. Defendants rejected the Spring Lake proposal out of hand.

3 152. In addition, although Spring Lake asked Defendants for a counter-proposal,  
4 Defendants refused to provide one.

5 153. Defendants' actions have caused the Company to lose two excellent financing  
6 opportunities, either of which could have provided the Company with the capital necessary to  
7 allow it to grow and flourish.

9 154. Defendants' actions have deprived the Company of much needed capital.

10 155. Defendants' actions have deprived the Company of experienced leadership.

11 156. Since the wrongful removal of Braddock as a co-Manager and the wrongful  
12 termination of his employment contract, Defendants have failed to apprise Braddock of  
13 significant developments affecting both his interest in the Company and the Company itself.

14 157. Likewise, since the wrongful removal of Braddock as a co-Manager and the  
15 wrongful termination of his employment contract, Defendants have prevented or sought to  
16 prevent Braddock from obtaining information and documents about Zaycon by interfering with  
17 Braddock's attempts to obtain such information and documents from other Zaycon owners and  
18 employees.

19 158. Braddock brings this action to recover damages for violations of the Securities  
20 Exchange Act of 1934, Rule 10b-5 promulgated thereunder, Washington State securities laws,  
21 common law fraud, negligence, breach of contract, breach of fiduciary duty, and aiding and  
22 abetting breach of fiduciary duty in an amount to be established at trial in excess of \$6.5 million  
23 dollars, and for a declaratory judgment that some or all of the membership units issued to  
24  
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Conrad, Maresca and Kremin and others are void.

**V. FIRST CLAIM**

**(Violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5)**

159. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

160. Defendants: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make their statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon Braddock.

161. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or the mails, engaged and participated in a continuous course of conduct involving materially false and misleading statements, to mislead and defraud Braddock.

162. Certain of these misrepresentations and omissions were fraudulently contained in the Second Amended and Restated Operating Agreement of Zaycon Foods dated November 1, 2012, a copy of which, as amended, was provided to Braddock during or about the summer of 2014.

163. The Operating Agreement falsely stated that the number of Class A Units which had been issued to Mike Conrad was 1,375,000.

164. The Operating Agreement falsely stated that the number of Class A units which had been issued to Adam Kremin was 1,375,000.

1           165.    The Operating Agreement falsely stated that the number of Class A Units which  
2 had been issued to Frank Maresca was 750,000.

3           166.    The Operating Agreement falsely stated that the total number of Class A Units  
4 which had been issued to Zaycon members was 5,500,000.

5           167.    The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
6 had been issued to Conrad.

7           168.    The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
8 had been issued to Kremin.

9           169.    The Operating Agreement failed to disclose that at least 1,750,000 Class A Units  
10 had been issued to Maresca.

11           170.    The Operating Agreement failed to disclose that over 3,000,000 Class A Units  
12 had been issued to Giunta.

13           171.    The Operating Agreement failed to disclose that the total number of Class A  
14 Units which had been issued to Zaycon members was over 14,881,000.

15           172.    Additional fraudulent misrepresentations and omissions were made in a series of  
16 meetings in New York and Colorado and during telephone conversations while Braddock was  
17 in New York or Colorado which began during mid-2014 and continued until January 2016.

18           173.    During these meetings and telephone conversations, each of the Individual  
19 Defendants, acting on behalf of himself and Zaycon and the other Individual Defendants,  
20 misrepresented a) that the Individual Defendants and other investors had placed substantial sums  
21 into the Company; and b) that an accurate capitalization chart was in the process of being  
22 prepared and would be provided to Braddock as soon as it was ready.  
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1           174. In addition, Defendants, individually and in concert, directly and indirectly, by  
2 the use, means or instrumentalities of interstate commerce and/or the mails, engaged and  
3 participated in a continuous course of conduct to conceal material adverse information about the  
4 business, operations and future prospects of Zaycon from Braddock.

5  
6           175. In particular, during these meetings and telephone conversations, each of the  
7 Individual Defendants, acting on behalf of himself and Zaycon and the other Individual  
8 Defendants, fraudulently failed to inform Braddock that a) DFI had initiated an action against  
9 Conrad in 2009; b) DFI had issued a Cease and Desist Order as to Conrad in January 2010; c)  
10 DFI had initiated an action against Kremin in 2009; d) DFI had issued a Cease and Desist Order  
11 as to Kremin in January 2010; e) Conrad had gone into personal bankruptcy in 2010; f) Maresca  
12 had been a creditor in Conrad's bankruptcy proceeding; g) Maresca had been given his interest  
13 in the Company for little or no consideration; h) Maresca owned at least 1,000,000 more voting  
14 units than the number of voting units set forth in Zaycon's Operating Agreement; i) Kremin had  
15 been a creditor in Conrad's bankruptcy proceeding; j) Kremin had been given his interest in the  
16 Company for little or no consideration; k) Kremin owned at least 1,625,000 more voting units  
17 than the number of voting units described in Zaycon's Operating Agreement; l) the law firm  
18 which prepared Zaycon's Operating Agreement had been a creditor in Conrad's bankruptcy  
19 proceeding; m) Conrad had been given his own interest in the Company for little or no  
20 consideration; n) Conrad owned at least 1,625,000 more voting units than the number of voting  
21 units described in Zaycon's Operating Agreement; and o) Giunta owned over 3,000,000 voting  
22 units which were not referenced in the Operating Agreement.

23  
24  
25           176. During the period from mid-2014 through January 2016, Maresca, Giunta,  
26

1 Conrad and Kremin, individually and on behalf of Zaycon and one another, continued to make  
2 the Misrepresentations and Omissions, orally and in writing, to Braddock in connection with  
3 solicitations of additional capital and loans from Braddock.

4 177. Each of Braddock's decisions to acquire Zaycon securities was made in reliance  
5 on the Misrepresentations and Omissions made by Maresca, Giunta, Conrad and Kremin.  
6

7 178. The Misrepresentations and Omissions used to solicit or induce Braddock to  
8 invest and/or loan money into and for Zaycon made by Maresca, Giunta, Conrad and Kremin  
9 were respectively false and fraudulent, or operated as a falsehood and a fraud on Braddock.

10 179. Braddock would not have invested in Zaycon if Defendants Maresca, Giunta,  
11 Conrad and Kremin had not made misrepresentations, and if Braddock had known the facts  
12 which Defendants Maresca, Giunta, Conrad and Kremin, in each case individually and on behalf  
13 of one another and Zaycon, failed to disclose.  
14

15 180. Braddock's agreements to invest in Zaycon and to loan money to Zaycon were  
16 made in reliance on the fraudulent Misrepresentations and Omissions made by Defendants  
17 Maresca, Giunta, Conrad and Kremin.

18 181. The fraudulent Misrepresentations and Omissions made by Defendants Maresca,  
19 Giunta, Conrad and Kremin were material.  
20

21 182. At the time Defendants Maresca, Giunta, Conrad and Kremin made the above  
22 referenced fraudulent Misrepresentations and Omissions, Defendants Maresca, Giunta, Conrad  
23 and Kremin knew that their Misrepresentations and Omissions were fraudulent.

24 183. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent  
25 Misrepresentations and Omissions with the intent to deceive Braddock.  
26

1 184. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent  
2 Misrepresentations and Omissions with intent to induce Braddock to join Zaycon and to invest  
3 in Zaycon.

4 185. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent  
5 Misrepresentations and Omissions with reckless disregard for truth or falsity.  
6

7 186. Braddock reasonably relied upon the fraudulent Misrepresentations and  
8 Omissions made by Maresca, Giunta, Conrad and Kremin to his detriment.

9 187. Each of the fraudulent Misrepresentations and Omissions made by Defendants  
10 Maresca, Giunta, Conrad and Kremin caused Braddock to sustain damages.

11 188. The fraudulent Misrepresentations and Omissions made by Maresca, Giunta,  
12 Conrad and Kremin have caused Braddock to lose his entire investment in Zaycon.  
13

14 189. The fraudulent Misrepresentations and Omissions made by Maresca, Giunta,  
15 Conrad and Kremin have caused Braddock to lose the money he loaned to Zaycon.

16 190. The allegations set forth above establish a strong inference that the Defendants  
17 acted with scienter in that they had actual knowledge of the Misrepresentations and Omissions,  
18 or acted with reckless disregard for the truth in that they failed to ascertain and disclose material  
19 facts. Defendants' material misrepresentations and/or omissions were made knowingly and/or  
20 with recklessness disregard for the truth and for the purpose and with the effect of concealing  
21 the truth from Braddock.  
22

23 191. Defendants herein are sued either as primary participants in the wrongful and  
24 illegal conduct charged herein or as controlling persons with ultimate authority over the  
25 Misrepresentations and Omissions alleged herein.  
26



1 192. Braddock has been caused to sustain losses and damages as a result of  
2 Defendants' Misrepresentations and Omissions.

3 193. Braddock would not have purchased any interest in Zaycon if he had been aware  
4 that the ownership and voting structure of Zaycon had been artificially manipulated by  
5 Defendants' fraudulent scheme, misleading statements, misrepresentations and material  
6 omissions.

7  
8 194. At the time of Defendants' materially false representations and omissions,  
9 Braddock was ignorant of the falsity of the statements made and of the facts omitted.

10 195. As a direct and proximate result of Defendants' wrongful conduct, Braddock has  
11 sustained damages in connection with his interest in Zaycon in an amount to be established at  
12 trial in excess of \$6,500,000.

13  
14 **VI. SECOND CLAIM**

15 **(Violation of RCW 21.20.010 – Unlawful Offers, Sales and Purchases of Security)**

16 196. Plaintiff repeats and realleges each and every allegation contained above as if  
17 fully set forth herein.

18 197. Zaycon was a seller of Zaycon securities to Braddock for purposes of RCW  
19 21.20.010.

20 198. Conrad was a seller of Zaycon securities to Braddock for purposes of RCW  
21 21.20.010.

22 199. Kremin was a seller of Zaycon securities to Braddock for purposes of RCW  
23 21.20.010.

24 200. Maresca was a seller of Zaycon securities to Braddock for purposes of RCW  
25 21.20.010.  
26

1           201.   Giunta was a seller of Zaycon securities to Braddock for purposes of RCW  
2 21.20.010.

3           202.   In connection with the sales of securities to Braddock and the purchase of  
4 securities by Braddock in Zaycon, Defendants violated RCW 21.20.010 by directly or indirectly  
5 making untrue statements of material fact and/or omitting to state material facts necessary in  
6 order to make the statements made, in the light of the circumstances under which they were  
7 made, not misleading, and by engaging in acts, practices, or a course of business which operated  
8 as a fraud or deceit upon Braddock.

9           203.   Certain of these misrepresentations and omissions were fraudulently contained  
10 in the Second Amended and Restated Operating Agreement of Zaycon Foods dated November  
11 1, 2012, a copy of which, as amended, was provided to Braddock during or about the summer  
12 of 2014.

13           204.   The Operating Agreement falsely stated that the number of Class A Units which  
14 had been issued to Mike Conrad was 1,375,000.

15           205.   The Operating Agreement falsely stated that the number of Class A units which  
16 had been issued to Adam Kremin was 1,375,000.

17           206.   The Operating Agreement falsely stated that the number of Class A Units which  
18 had been issued to Frank Maresca was 750,000.

19           207.   The Operating Agreement falsely stated that the total number of Class A Units  
20 which had been issued to Zaycon members was 5,500,000.

21           208.   The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
22 had been issued to Conrad.

1           209.    The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
2 had been issued to Kremin.

3           210.    The Operating Agreement failed to disclose that at least 1,750,000 Class A Units  
4 had been issued to Maresca.

5           211.    The Operating Agreement failed to disclose that over 3,000,000 Class A Units  
6 had been issued to Giunta.

7           212.    The Operating Agreement failed to disclose that the total number of Class A  
8 Units which had been issued to Zaycon members was over 14,881,000.

9           213.    Additional fraudulent misrepresentations and omissions were made in a series of  
10 meetings in New York and Colorado and during telephone conversations while Braddock was  
11 in New York or Colorado which began during mid-2014 and continued until January 2016.  
12

13           214.    During these meetings and telephone conversations, each of the Individual  
14 Defendants, acting on behalf of himself and Zaycon and the other Individual Defendants,  
15 misrepresented a) that the Individual Defendants and other investors had placed substantial sums  
16 into the Company; and b) that an accurate capitalization chart was in the process of being  
17 prepared and would be provided to Braddock as soon as it was ready.  
18

19           215.    In addition, during these meetings and telephone conversations, each of the  
20 Individual Defendants, acting on behalf of himself and Zaycon and the other Individual  
21 Defendants, fraudulently failed to inform Braddock that a) DFI had initiated an action against  
22 Conrad in 2009; b) DFI had issued a Cease and Desist Order as to Conrad in January 2010; c)  
23 DFI had initiated an action against Kremin in 2009; d) DFI had issued a Cease and Desist Order  
24 as to Kremin in January 2010; e) Conrad had gone into personal bankruptcy in 2010; f) Maresca  
25  
26

1 had been a creditor in Conrad's bankruptcy proceeding; g) Maresca had been given his interest  
2 in the Company for little or no consideration; h) Maresca owned at least 1,000,000 more voting  
3 units than the number of voting units set forth in Zaycon's Operating Agreement; i) Kremin had  
4 been a creditor in Conrad's bankruptcy proceeding; j) Kremin had been given his interest in the  
5 Company for little or no consideration; k) Kremin owned at least 1,625,000 more voting units  
6 than the number of voting units described in Zaycon's Operating Agreement; l) the law firm  
7 which prepared Zaycon's Operating Agreement had been a creditor in Conrad's bankruptcy  
8 proceeding; m) Conrad had been given his own interest in the Company for little or no  
9 consideration; n) Conrad owned at least 1,625,000 more voting units than the number of voting  
10 units described in Zaycon's Operating Agreement; and o) Giunta owned over 3,000,000 voting  
11 units which were not referenced in the Operating Agreement.  
12  
13

14 216. During the period from mid-2014 through January 2016, Maresca, Giunta,  
15 Conrad and Kremin, individually and on behalf of Zaycon and one another, continued to make  
16 the Misrepresentations and Omissions, orally and in writing, to Braddock in connection with  
17 solicitations of additional capital and loans from Braddock.

18 217. Defendants made the Misrepresentations.

19 218. Defendants made the Omissions.

20 219. Defendants acted with intent to defraud Braddock.

21 220. Braddock did not know of the Misrepresentations and Omissions.

22 221. Defendants' Misrepresentations and Omissions were material to the purchase of  
23 Zaycon securities by Braddock.  
24

25 222. Braddock reasonably relied on Defendants' Misrepresentations and Omissions.  
26

223. Braddock would not have purchased Zaycon securities but for the Misrepresentations and Omissions.

224. Braddock has suffered damages proximately caused by Defendants' violations of RCW 21.20.010 in an amount to be established at trial in excess of \$6,500,000.

## **VII. THIRD CLAIM**

### **(Conrad's Liability under RCW 21.20.430 – Violation of DFI Cease and Desist Order)**

225. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

226. Conrad's participation in the sale of securities to Braddock was in direct violation of the January 27, 2010, DFI Cease and Desist Order which expressly precluded Conrad from (i) violating RCW 21.20.140 by offering or selling securities for which there was no registration on file with the Washington State Securities Administration; (ii) violating RCW 21.20.040 by offering or selling securities while not registered as a salesperson or broker-dealer in the State of Washington; and (iii) violating RCW 21.20.010 by making misstatements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

227. Conrad offered and/or sold securities for which there was no registration on file with the Washington State Securities Administration.

228. Conrad offered and/or sold securities while not registered as a salesperson or broker-dealer in the State of Washington.

229. Conrad offered and/or sold securities by making misstatements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

230. Based upon the foregoing, Conrad violated the January 27, 2010 DFI Cease and Desist Order.

231. Conrad is liable to Braddock for all damages caused to Braddock, and for all remedies to which Braddock is entitled, as the result of his violations of RCW 21.20.010, RCW 21.20.040 and RCW 21.20.140 in selling Zaycon securities to Braddock in an amount to be established at trial in excess of \$6,500,000.

#### **VIII. FOURTH CLAIM**

##### **(Kremin's Liability under RCW 21.20.430 – Violation of DFI Cease and Desist Order)**

232. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

233. Kremin's participation in the sale of securities to Braddock was in direct violation of the January 27, 2010 DFI Cease and Desist Order which expressly precluded Kremin from (i) violating RCW 21.20.140 by offering or selling securities for which there was no registration on file with the Washington State Securities Administration; (ii) violating RCW 21.20.040 by offering or selling securities while not registered as a salesperson or broker-dealer in the State of Washington, and (iii) violating RCW 21.20.010 by making misstatements of material fact or omission to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

234. Kremin offered and/or sold securities for which there was no registration on file with the Washington State Securities Administration.

235. Kremin offered and/or sold securities while not registered as a salesperson or broker-dealer in the State of Washington.

236. Kremin offered and/or sold securities by making misstatements of material fact



1 or omitting to state material facts necessary in order to make the statements made, in light of the  
2 circumstances under which they were made, not misleading.

3 237. Based upon the foregoing, Kremin violated the January 27, 2010 DFI Cease and  
4 Desist Order.

5 238. Kremin is liable to Braddock for all damages caused to Braddock, and for all  
6 remedies to which Braddock is entitled, as the result of his violations of RCW 21.20.010, RCW  
7 21.20.040 and RCW 21.20.140 in selling Zaycon securities to Braddock in an amount to be  
8 established at trial in excess of \$6,500,000.

9  
10 **IX. FIFTH CLAIM**

11 **(Fraud Claim Against All Defendants)**

12 239. Plaintiff repeats and realleges each and every allegation set forth above as if set  
13 forth fully and length herein.

14 240. During or about mid-2014, Maresca, Giunta, Conrad and Kremin, individually  
15 and on behalf of Zaycon and one another, aggressively pursued Braddock in order to interest  
16 him in investing in Zaycon.

17 241. Maresca, Giunta, Conrad and Kremin, individually and on behalf of Zaycon and  
18 one another, made various Misrepresentations and Omissions to Braddock, orally and in writing,  
19 in an effort to solicit Braddock's financial and managerial involvement in Zaycon.

20 242. Certain of these misrepresentations and omissions were fraudulently contained  
21 in the Second Amended and Restated Operating Agreement of Zaycon Foods dated November  
22 1, 2012, a copy of which, as amended, was provided to Braddock during or about the summer  
23 of 2014.

24 243. The Operating Agreement falsely stated that the number of Class A Units which  
25

1 had been issued to Mike Conrad was 1,375,000.

2       244. The Operating Agreement falsely stated that the number of Class A units which  
3 had been issued to Adam Kremin was 1,375,000.

4       245. The Operating Agreement falsely stated that the number of Class A Units which  
5 had been issued to Frank Maresca was 750,000.

6       246. The Operating Agreement falsely stated that the total number of Class A Units  
7 which had been issued to Zaycon members was 5,500,000.

8       247. The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
9 had been issued to Conrad.

10       248. The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
11 had been issued to Kremin.

12       249. The Operating Agreement failed to disclose that at least 1,750,000 Class A Units  
13 had been issued to Maresca.

14       250. The Operating Agreement failed to disclose that over 3,000,000 Class A Units  
15 had been issued to Giunta.

16       251. The Operating Agreement failed to disclose that the total number of Class A  
17 Units which had been issued to Zaycon members was over 14,881,000.

18       252. Additional fraudulent misrepresentations and omissions were made in a series of  
19 meetings in New York and Colorado and during telephone conversations while Braddock was  
20 in New York or Colorado which began during mid-2014 and continued until January 2016.

21       253. During these meetings and telephone conversations, each of the Individual  
22 Defendants, acting on behalf of himself and Zaycon and the other Individual Defendant,  
23  
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1 misrepresented a) that the Individual Defendants and other investors had placed substantial sums  
2 into the Company; and b) that an accurate capitalization chart was in the process of being  
3 prepared and would be provided to Braddock as soon as it was ready.

4  
5 254. In addition, during these meetings and telephone conversations, each of the  
6 Individual Defendants, acting on behalf of himself and Zaycon and the other Individual  
7 Defendants, fraudulently failed to inform Braddock that a) DFI had initiated an action against  
8 Conrad in 2009; b) DFI had issued a Cease and Desist Order as to Conrad in January 2010; c)  
9 DFI had initiated an action against Kremin in 2009; d) DFI had issued a Cease and Desist Order  
10 as to Kremin in January 2010; e) Conrad had gone into personal bankruptcy in 2010; f) Maresca  
11 had been a creditor in Conrad's bankruptcy proceeding; g) Maresca had been given his interest  
12 in the Company for little or no consideration; h) Maresca owned at least 1,000,000 more voting  
13 units than the number of voting units set forth in Zaycon's Operating Agreement; i) Kremin had  
14 been a creditor in Conrad's bankruptcy proceeding; j) Kremin had been given his interest in the  
15 Company for little or no consideration; k) Kremin owned at least 1,625,000 more voting units  
16 than the number of voting units described in Zaycon's Operating Agreement; l) the law firm  
17 which prepared Zaycon's Operating Agreement had been a creditor in Conrad's bankruptcy  
18 proceeding; m) Conrad had been given his own interest in the Company for little or no  
19 consideration; n) Conrad owned at least 1,625,000 more voting units than the number of voting  
20 units described in Zaycon's Operating Agreement; and o) Giunta owned over 3,000,000 voting  
21 units which were not referenced in the Operating Agreement.  
22  
23

24 255. During the period from mid-2014 through January 2016, Maresca, Giunta,  
25 Conrad and Kremin, individually and on behalf of Zaycon and one another, continued to make  
26

1 the Misrepresentations and Omissions, orally and in writing, to Braddock in connection with  
2 solicitations of additional capital and loans from Braddock.

3       256. Each of Braddock's decisions to acquire Zaycon securities was made in reliance  
4 on the Misrepresentations and Omissions made by Maresca, Giunta, Conrad and Kremin.

5       257. The Misrepresentations and Omissions used to solicit or induce Braddock to  
6 invest and/or loan money into and for Zaycon made by Maresca, Giunta, Conrad and Kremin  
7 were false.

8       258. Braddock would not have invested in Zaycon but for the Misrepresentations and  
9 Omissions.

10       259. Braddock's agreements to invest in Zaycon and to loan money to Zaycon were  
11 made in reliance on the fraudulent Misrepresentations and Omissions made by Defendants  
12 Maresca, Giunta, Conrad and Kremin.

13       260. The fraudulent Misrepresentations and Omissions made by Defendants Maresca,  
14 Giunta, Conrad and Kremin were material.

15       261. At the time Defendants Maresca, Giunta, Conrad and Kremin made the above  
16 referenced fraudulent Misrepresentations and Omissions, Defendants Maresca, Giunta, Conrad  
17 and Kremin knew that their Misrepresentations and Omissions were fraudulent.

18       262. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent  
19 Misrepresentations and Omissions with the intent to deceive Braddock.

20       263. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent  
21 Misrepresentations and Omissions with intent to induce Braddock to join Zaycon and to invest  
22 in Zaycon.

264. Defendants Maresca, Giunta, Conrad and Kremin made their fraudulent Misrepresentations and Omissions with reckless disregard for truth or falsity.

265. Braddock reasonably relied upon the fraudulent Misrepresentations and Omissions made by Maresca, Giunta, Conrad and Kremin to his detriment.

266. Each of the fraudulent Misrepresentations and Omissions made by Defendants Maresca, Giunta, Conrad and Kremin caused Braddock to sustain damages.

267. The fraudulent Misrepresentations and Omissions made by Maresca, Giunta, Conrad and Kremin have caused Braddock to lose his entire investment in Zaycon.

268. The fraudulent Misrepresentations and Omissions made by Maresca, Giunta, Conrad and Kremin have caused Braddock to lose the money he loaned to Zaycon.

269. The wrongdoing of Maresca, Giunta, Conrad and Kremin was intentional, wanton, outrageous, morally culpable, and perpetrated with wrongful, reckless and malicious disregard for the rights of Zaycon and its members, including Braddock.

270. As a direct and proximate result of Defendants' wrongful conduct, Braddock has sustained damages in connection with his interest in Zaycon in an amount to be established at trial in excess of \$6,500,000.

#### **X. SIXTH CLAIM**

##### **(Negligent Misrepresentation Against All Defendants)**

271. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.

272. Defendants had a duty to provide Braddock with complete and accurate information respecting Zaycon, including but not limited to information respecting its capitalization, prospects, risks and ownership.

1           273. Defendants Zaycon, Maresca, Giunta, Conrad and Kremin, acting on behalf of  
2 one another and Zaycon, negligently supplied Braddock with false and misleading information  
3 respecting Zaycon's capitalization, prospects, risks and ownership prior to each of Braddock's  
4 investments and loans into Zaycon.

5           274. Certain of Defendants' misrepresentations and omissions were negligently  
6 contained in the Second Amended and Restated Operating Agreement of Zaycon Foods dated  
7 November 1, 2012, a copy of which, as amended, was provided to Braddock during or about the  
8 summer of 2014.

9           275. The Operating Agreement falsely stated that the number of Class A Units which  
10 had been issued to Mike Conrad was 1,375,000.

11           276. The Operating Agreement falsely stated that the number of Class A units which  
12 had been issued to Adam Kremin was 1,375,000.

13           277. The Operating Agreement falsely stated that the number of Class A Units which  
14 had been issued to Frank Maresca was 750,000.

15           278. The Operating Agreement falsely stated that the total number of Class A Units  
16 which had been issued to Zaycon members was 5,500,000.

17           279. The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
18 had been issued to Conrad.

19           280. The Operating Agreement failed to disclose that at least 3,000,000 Class A Units  
20 had been issued to Kremin.

21           281. The Operating Agreement failed to disclose that at least 1,750,000 Class A Units  
22 had been issued to Maresca.

1           282.    The Operating Agreement failed to disclose that over 3,000,000 Class A Units  
2 had been issued to Giunta.

3           283.    The Operating Agreement failed to disclose that the total number of Class A  
4 Units which had been issued to Zaycon members was over 14,881,000.

5           284.    Defendants Zaycon, Maresca, Giunta, Conrad and Kremin, acting on behalf of  
6 one another and Zaycon, also made negligent misrepresentations to Braddock by  
7 misrepresenting a) that the Individual Defendants and other investors had placed substantial  
8 sums into the Company; and b) that an accurate capitalization chart was in the process of being  
9 prepared and would be provided to Braddock as soon as it was ready.

10  
11           285.    In addition, Defendants Zaycon, Maresca, Giunta, Conrad and Kremin, acting on  
12 behalf of one another and Zaycon, negligently failed to inform Braddock that a) DFI had  
13 initiated an action against Conrad in 2009; b) DFI had issued a Cease and Desist Order as to  
14 Conrad in January 2010; c) DFI had initiated an action against Kremin in 2009; d) DFI had  
15 issued a Cease and Desist Order as to Kremin in January 2010; e) Conrad had gone into personal  
16 bankruptcy in 2010; f) Maresca had been a creditor in Conrad's bankruptcy proceeding; g)  
17 Maresca had been given his interest in the Company for little or no consideration; h) Maresca  
18 owned at least 1,000,000 more voting units than the number of voting units set forth in Zaycon's  
19 Operating Agreement; i) Kremin had been a creditor in Conrad's bankruptcy proceeding; j)  
20 Kremin had been given his interest in the Company for little or no consideration; k) Kremin  
21 owned at least 1,625,000 more voting units than the number of voting units described in  
22 Zaycon's Operating Agreement; l) the law firm which prepared Zaycon's Operating Agreement  
23 had been a creditor in Conrad's bankruptcy proceeding; m) Conrad had been given his own  
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1 interest in the Company for little or no consideration; n) Conrad owned at least 1,625,000 more  
2 voting units than the number of voting units described in Zaycon's Operating Agreement; and  
3 o) Giunta owned over 3,000,000 voting units which were not referenced in the Operating  
4 Agreement.

5  
6 286. Braddock relied on the materially false and misleading statements and/or the  
7 non-disclosure of material adverse facts by Defendants in making his investments in Zaycon  
8 from August 2014 through January 2016.

9 287. Braddock's reliance on the materially false and misleading statements made by  
10 Defendants and/or on their non-disclosure of material adverse facts was reasonable and justified.

11 288. The false and misleading information supplied and furnished by Defendants was  
12 the proximate cause of the damages sustained by Braddock.

13  
14 289. As a direct and proximate result of Defendants' wrongful conduct, Braddock has  
15 sustained damages in connection with his interest in Zaycon in an amount to be established at  
16 trial in excess of \$6,500,000.

17 **XI. SEVENTH CLAIM**  
18 **(Breach of Fiduciary Duty)**

19 290. Plaintiff repeats and realleges each and every allegation set forth above as if set  
20 forth fully and at length herein.

21 291. Plaintiff asserts this claim against Defendants Maresca, Giunta and Conrad.

22 292. As managers and control persons of Zaycon, Maresca, Giunta and Conrad owed  
23 fiduciary duties of loyalty, due care, good faith/fair dealing, candor and full disclosure of all  
24 material facts to the Company and to its members and to Braddock in his capacity as a member  
25 and as Co-managing Member of Zaycon.  
26

1           293.   Braddock reasonably and justifiably reposed his trust and confidence in Maresca,  
2           Giunta and Conrad to properly perform their duties in connection with the Company and to deal  
3           fairly and act with loyalty, due care and candor and in good faith and to provide full disclosure.

4           294.   Maresca, Giunta and Conrad breached their fiduciary duties of loyalty, due care,  
5           good faith/fair dealing, candor, and full disclosure to Braddock by misrepresenting a) that the  
6           Individual Defendants and other investors had placed substantial sums into the Company; and  
7           b) that an accurate capitalization chart was in the process of being prepared and would be  
8           provided to Braddock as soon as it was ready.

9           295.   Maresca, Giunta and Conrad further breached their fiduciary duties of loyalty,  
10          due care, good faith/fair dealing, candor and full disclosure to Braddock by failing to inform  
11          Braddock that a) DFI had initiated an action against Conrad in 2009; b) DFI had issued a Cease  
12          and Desist Order as to Conrad in January 2010; c) DFI had initiated an action against Kremin  
13          in 2009; d) DFI had issued a Cease and Desist Order as to Kremin in January 2010; e) Conrad  
14          had gone into personal bankruptcy in 2010; f) Maresca had been a creditor in Conrad's  
15          bankruptcy proceeding; g) Maresca had been given his interest in the Company for little or no  
16          consideration; h) Maresca owned at least 1,000,000 more voting units than the number of voting  
17          units set forth in Zaycon's Operating Agreement; i) Kremin had been a creditor in Conrad's  
18          bankruptcy proceeding; j) Kremin had been given his interest in the Company for little or no  
19          consideration; k) Kremin owned at least 1,625,000 more voting units than the number of voting  
20          units described in Zaycon's Operating Agreement; l) the law firm which prepared Zaycon's  
21          Operating Agreement had been a creditor in Conrad's bankruptcy proceeding; m) Conrad had  
22          been given his own interest in the Company for little or no consideration; n) Conrad owned at  
23          24          25          26

1 least 1,625,000 more voting units than the number of voting units described in Zaycon's  
2 Operating Agreement; and o) Giunta owned over 3,000,000 voting units which were not  
3 referenced in the Operating Agreement.

4           296. Maresca, Giunta and Conrad further breached their fiduciary duties of loyalty,  
5 due care, good faith/fair dealing, candor, and full disclosure to Zaycon and Braddock by (i)  
6 conspiring to terminate Braddock's employment contract and his status as Co-managing  
7 Member of the Company for their own self-interested reasons; (ii) manipulating the Zaycon  
8 capitalization structure; (iii) manipulating the voting process that resulted in the execution of  
9 the Consent; (iv) withholding information from Braddock which he needed in order to convert  
10 the debt owed to him into Class A voting equity and to exercise his option to buy additional  
11 Class A membership units; (v) allowing Maresca to run the Company as its sole managing  
12 member in violation of Section 4.1 of the Operating Agreement, which states that "[t]he  
13 Company shall be managed by two managers"; (vi) acting in their own self-interest and contrary  
14 to the best interests of Zaycon in an effort to retain control of a company in which they had made  
15 little or no investment; (vii) sabotaging the prospect of an investment by Great Hill by  
16 terminating Braddock's status as Co-managing Member and as CEO and by interfering with the  
17 elimination of the Company's debt for their own self-interested reasons only days after receiving  
18 the Great Hill proposal and notwithstanding Great Hill's requirement that the Company be debt  
19 free at closing; (viii) refusing even to negotiate with Spring Lake or otherwise to consider or  
20 make any effort to obtain an equity investment from Spring Lake; (ix) failing to apprise  
21 Braddock of significant developments affecting both his interest in the Company and the  
22 Company itself; and (x) preventing or seeking to prevent Braddock from obtaining information  
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1 and documents about Zaycon by interfering with Braddock's attempts to obtain such  
2 information and documents from other Zaycon owners and employees.

3 297. Maresca, Giunta and Conrad have acted in bad faith and in a manner inconsistent  
4 with their fiduciary duties.

5 298. The breaches of their fiduciary duties by Maresca, Giunta and Conrad have been  
6 the proximate cause of Braddock's damages.

7 299. As a direct and proximate result of Defendants' wrongful conduct, Braddock has  
8 sustained damages in connection with his interest in Zaycon in an amount to be established at  
9 trial in excess of \$6,500,000.

10  
11 **XII. EIGHTH CLAIM**

12 **(Breach of Contract)**

13 300. Plaintiff repeats and realleges each and every allegation set forth above as if set  
14 forth fully and at length herein.

15 301. Plaintiff asserts this claim against Defendants Zaycon, Maresca, Giunta, Conrad  
16 and Kremin.

17 302. At all times mentioned, Zaycon and its members operated the Company pursuant  
18 to an Operating Agreement dated November 1, 2012.

19 303. The Operating Agreement contained an implied covenant of good faith and fair  
20 dealing.

21 304. Braddock has fulfilled and performed all the terms and conditions required of  
22 him by the terms of the Operating Agreement.

23 305. Defendants Zaycon, Maresca, Giunta, Conrad and Kremin breached the  
24 Operating Agreement and Braddock's employment contract by (i) conspiring to terminate  
25  
26

1 Braddock's employment contract and his status as Co-managing Member of the Company for  
2 their own self-interested reasons; (ii) manipulating the Zaycon capitalization structure; (iii)  
3 manipulating the voting process that resulted in the execution of the Consent; (iv) withholding  
4 information from Braddock which he needed in order to convert the debt owed to him into Class  
5 A voting equity and to exercise his option to buy additional Class A membership units; (v)  
6 allowing Maresca to run the Company as its sole managing member in violation of Section 4.1  
7 of the Operating Agreement, which states that "[t]he Company shall be managed by two  
8 managers"; (vi) acting in their own self-interest and contrary to the best interests of Zaycon in  
9 an effort to retain control of a company in which they had made little or no investment; (vii)  
10 sabotaging the prospect of an investment by Great Hill by terminating Braddock's status as Co-  
11 managing Member and as CEO and by interfering with the elimination of the Company's debt  
12 for their own self-interested reasons only days after receiving the Great Hill proposal and  
13 notwithstanding Great Hill's requirement that the Company be debt free at closing; (viii)  
14 refusing even to negotiate with Spring Lake or otherwise to consider or make any effort to obtain  
15 an equity investment from Spring Lake; (ix) failing to apprise Braddock of significant  
16 developments affecting both his interest in the Company and the Company itself; and (x)  
17 preventing or seeking to prevent Braddock from obtaining information and documents about  
18 Zaycon by interfering with Braddock's attempts to obtain such information and documents from  
19 other Zaycon owners and employees.  
20  
21  
22

23 306. As a result of the foregoing, Plaintiff Braddock is entitled to compensatory  
24 damages from Defendants Zaycon, Maresca, Giunta, Conrad and Kremin in an amount to be  
25 proven at trial in excess of \$6,500,000 plus interest.  
26



**XIII. NINTH CLAIM**

**(Aiding and Abetting Breach of Fiduciary Duty)**

307. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.

308. Plaintiff asserts this claim against Defendant Kremin.

309. Defendants Maresca, Giunta and Conrad breached their fiduciary duties to Braddock by making material misrepresentations and omissions to him.

310. Defendants Maresca, Giunta and Conrad breached their fiduciary duties to Zaycon and Braddock by, *inter alia*, conspiring to terminate Braddock's employment contract and his status as Co-managing Member of the Company for their own self-interested reasons.

311. Defendants Maresca, Giunta and Conrad breached their fiduciary duties to Zaycon and Braddock by, *inter alia*, fraudulently inducing certain Zaycon members to vote for Braddock's removal, thereby manipulating the voting process that resulted in the execution of the Consent.

312. Defendants Maresca, Giunta and Conrad asked Kremin to assist in making misrepresentations and omissions to Braddock.

313. Defendants Maresca, Giunta and Conrad asked Kremin to assist in the ouster of Braddock.

314. Defendants Maresca, Giunta and Conrad asked Kremin to assist in the manipulation of the voting process.

315. Defendant Kremin participated in and aided and abetted in the making of misrepresentations and omissions to Braddock.

316. Defendant Kremin participated in and aided and abetted the ouster of Braddock

1 by advising and conspiring with Maresca, Giunta and Conrad to terminate Braddock's  
2 employment and his status as Co-managing Member of the Company.

3 317. Defendant Kremin participated in and aided and abetted the manipulation of the  
4 voting process that resulted in the execution of the Consent by falsely and fraudulently telling  
5 Zaycon members that Braddock was opposed to the deal with Great Hill and that he would kill  
6 it.  
7

8 318. The actions of Kremin have caused Plaintiff Braddock to sustain damages.

9 319. As a result of the foregoing, Braddock is entitled to compensatory damages from  
10 Kremin in an amount to be proven at trial in excess of \$6,500,000, plus interest.

11 **XIV. TENTH CLAIM**

12 **(Declaratory Judgment)**

13 320. Plaintiff repeats and realleges each and every allegation set forth above as if set  
14 forth fully and at length herein.  
15

16 321. Defendants Maresca, Conrad, Giunta and Kremin awarded grossly  
17 disproportionate numbers of Zaycon membership units to themselves and to friends and family  
18 members for little or no consideration.

19 322. The issuance of Zaycon membership units to Maresca, Conrad and Kremin is  
20 void.  
21

22 323. The issuance of Zaycon membership units to friends and family members of  
23 Maresca, Conrad, Giunta and Kremin for little or no consideration is void.

24 324. This cause of action raises a justiciable controversy, sufficiently definite and  
25 concrete to warrant declaratory relief.  
26

325. Braddock is entitled to a declaratory judgment that all or part of the Maresca, Conrad and Kremin units in Zaycon are invalid.

326. Braddock is entitled to a declaratory judgment that all or part of the Zaycon membership units awarded to friends and family members of Maresca, Conrad, Giunta and Kremin for little or no consideration are invalid.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment as follows:

1. Awarding compensatory damages to Plaintiff Braddock in an amount to be determined at trial in excess of \$6,500,000;

2. For a declaratory judgment that some or all of the membership units issued to Conrad, Maresca and Kremin and to others for little or no consideration are void; and

3. Awarding such other and further relief as is just and proper, including pre-judgment interest, costs and reasonable attorneys' fees pursuant to the Securities Act of Washington.

DATED this 14th day of November, 2016.

RYAN, SWANSON & CLEVELAND, PLLC

By /s/ Michael J. Brown

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